

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matters of:

5 RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg

6 Debtors.

7 - - - - -x

8 GMAC MORTGAGE, LLC, Case No. 12-12032-mg

9 Debtor.

10 - - - - -x

11 HEYWARD,

12 Plaintiff,

13 - against Adv. Proc. 14-017784-mg

14 GMAC MORTGAGE, et al.,

15 Defendants.

16 - - - - -x

17 United States Bankruptcy Court

18 One Bowling Green

19 New York, New York

20 May 29, 2014

21 10:02 AM

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23 B E F O R E:

24 HON. MARTIN GLENN

25 U.S. BANKRUPTCY JUDGE

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(CC: Doc# 5161) Adj. Hrg. RE: Motion for Omnibus Objection to
Claim(s) / Debtors' Forty-Ninth Omnibus Objection to Claims (No
Liability Borrower Claims - Books and Records)
Going Forward solely as to the claim filed by Mary R.
Biancavilla (Claim No. 4397).

(CC: Doc# 6777) Motion for Omnibus Objection to Claim(s) / The
ResCap Borrower Claims Trust's Sixty-First Omnibus Objection to
Claims (No Liability Borrower Claims).

Adversary proceeding: 14-01778
(CC: Doc no. 1) Status Conference

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RESIDENTIAL CAPITAL, LLC, ET AL.

4

1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, number 12-12020. Mr. Wishnew?

4 MR. WISHNEW: Good morning, Your Honor. Jordan
5 Wishnew of Morrison & Foerster for the ResCap Borrower Claims
6 Trust.

7 Your Honor, the first matter being addressed on
8 today's agenda is on page 5 under "Claim Objections", the
9 debtors' forty-ninth omnibus objection to claims, solely as it
10 relates to the claim of Mary Biancavilla.

11 The purpose -- we kept this on today's calendar simply
12 because we wanted to let the Court know that we are in active
13 settlement discussions with Ms. Biancavilla. She previously
14 had counsel. I don't want to represent whether she still is or
15 is not working with counsel. But we have given her a
16 settlement agreement consistent with our discussions with her
17 that she is considering. We've had a lengthy discussion with
18 her yesterday about the terms of the settlement agreement. She
19 is still reviewing it. She's asking questions of us, which
20 we're going back to the Borrower Trust for.

21 We are optimistic that it will ultimately get
22 resolved. If this matter needs to get back on the Court's
23 calendar, we will so advise the Court, but for now, we are
24 actively trying to resolve this matter consensually.

25 THE COURT: Thank you.

1 MR. WISHNEW: Your Honor, the next matter on the
2 calendar is item 2, page 6, the Borrower Claims Trust's sixty-
3 first omnibus objection to claims. We labeled them as no-
4 liability borrower claims.

5 Identified on Exhibit A to the form of order are
6 forty-one claims that the Borrower Claims Trust asserts have no
7 liability or no basis for liability against the debtors and the
8 Borrower Claims Trust. The reasons for the objections are set
9 forth in detail on the Exhibit A to the order.

10 Ms. Horst, the debtors' -- the chief claims officer
11 for the ResCap Liquidating Trust and the debtors, is in the
12 court here to support her declaration if the Court should have
13 any questions.

14 It is the Borrower Claims Trust's position that the
15 allegations and the objections set forth in Exhibit A to the
16 order refute essential elements of each of the claims that are
17 in dispute and identified. Responses to the objection were due
18 May 12th. We received two objections, one from Mr. Tobias, a
19 second from Mr. Larkins, and a third from Mr. Farrell, but Mr.
20 Farrell is actually not identified in any way in the Exhibit A
21 to the sixty-first omnibus objection, and I think he's eager to
22 have his claim addressed by the Court, and the Borrower Claims
23 Trust will do so, but Mr. Farrell is not subject to the sixty-
24 first omnibus objection, so we will not address that objection
25 today.

1 THE COURT: All right. Before you go on, I see -- Ms.
2 Biancavilla, are you on the phone?

3 MS. BIANCAVILLA: Yes, I am, Your Honor. Good
4 morning.

5 THE COURT: All right. Good morning. And you heard
6 Mr. Wishnew describe, without going into details -- which I
7 don't want -- is it correct that you're in the process of
8 considering a proposed settlement with the trust?

9 MS. BIANCAVILLA: Yeah. My previous attorney, he
10 signed off -- I don't know if he did it officially with the
11 court -- but he had sent me a letter, and he had entered into
12 settlement negotiations on my behalf. And so I'm feeling a
13 little outside of my comfort zone in trying to continue without
14 counsel.

15 But the -- Kurtzman Carson Associates, I believe
16 that's the name -- Stacy and Mr. Wishnew, they've been very
17 engaging and very kind. I just don't know a lot of the legal
18 ramifications. So that -- but they've been, you know, good in
19 explaining things.

20 THE COURT: Okay. Ma'am I just asked --

21 MS. BIANCAVILLA: I'm not sure if I want --

22 THE COURT: -- I just want to be clear about one
23 thing. Is it correct that you no longer have an attorney
24 representing you?

25 MS. BIANCAVILLA: That is my understanding. There's

1 been quite a bit of confusion through this process as to what
2 exactly he's doing, when -- so that he cited at some point that
3 it was taking a long time and so, you know, and I couldn't
4 agree more with him, because there was some confusion inserted
5 that I didn't, you know, understand where that was coming from,
6 exactly. But and there was maybe an illness in his family, and
7 I felt well, maybe that's the connection and he might be --

8 THE COURT: So let me just explain. The reason I'm
9 inquiring is that if you're represented by counsel, the legal
10 ethics rules require that the Trust's counsel not speak
11 directly to you but to your counsel.

12 MS. BIANCAVILLA: Right.

13 THE COURT: If you're no longer represented by
14 counsel, it's perfectly appropriate for them to speak to you
15 directly.

16 MS. BIANCAVILLA: Right. Okay.

17 THE COURT: And that's what I --

18 MS. BIANCAVILLA: Well, I appreciate that. Yeah. So
19 that, you know, it's my understanding that he is no longer
20 involved.

21 THE COURT: Okay.

22 MS. BIANCAVILLA: I don't know if he -- he said he was
23 filing whatever paperwork to, you know, make it right with the
24 court. I'm not aware of what that would be.

25 THE COURT: Well, let me just ask, in your view, he's

1 not representing you; you're acting on your own behalf for now?

2 MS. BIANCAVILLA: Well, in my view, it would appear
3 that he's not representing me.

4 THE COURT: Okay.

5 MS. BIANCAVILLA: There's -- there's other things that
6 would make it seem that he thinks he's still involved,
7 because -- you know, and I don't like to get the Court involved
8 in all of this, but you know, he would be contingency --
9 believes that he's still --

10 THE COURT: Okay.

11 MS. BIANCAVILLA: -- to receive payment for work
12 that's no longer doing.

13 THE COURT: I'm not going to get in the middle of --

14 MS. BIANCAVILLA: I know, I know.

15 THE COURT: -- the issues between you and --

16 MS. BIANCAVILLA: I'm sorry. So --

17 THE COURT: No, I just --

18 MS. BIANCAVILLA: -- it's hard for me to answer that
19 question as to where exactly he is. So that's -- he may end up
20 showing up just to, you know, get paid.

21 THE COURT: Okay.

22 MS. BIANCAVILLA: I don't know. I haven't --

23 THE COURT: But let me just --

24 MS. BIANCAVILLA: -- but that's further --

25 THE COURT: -- okay. But as far as you're concerned,

1 you're acting, at this stage, on your own behalf.

2 MS. BIANCAVILLA: Yeah.

3 THE COURT: And you want to continue to have your
4 discussions with Mr. Wishnew or his colleagues to see whether
5 you can resolve the matter. Am I correct in that?

6 MS. BIANCAVILLA: Yeah, yeah.

7 THE COURT: Okay. That's fine.

8 MS. BIANCAVILLA: You know, they're kind and they've
9 been, you know, forthcoming.

10 THE COURT: Okay.

11 MS. BIANCAVILLA: You know, again, as I said, I'm a
12 little, you know, out of my comfort zone --

13 THE COURT: Okay.

14 MS. BIANCAVILLA: -- with the, you know, legal
15 matters.

16 THE COURT: Okay.

17 MS. BIANCAVILLA: So that I'm not sure that at some
18 point I might want to bring in some legal counsel, but right
19 now I am acting on my own behalf.

20 THE COURT: Okay, that's fine.

21 MS. BIANCAVILLA: That's correct.

22 THE COURT: That's the only thing I wanted to resolve.

23 MS. BIANCAVILLA: Yeah, I appreciate your clarifying
24 that for me.

25 THE COURT: Okay. And so I'm going to adjourn the

1 matter from today, so that you and Mr. Wishnew or his
2 colleagues can continue your discussions. And we'll see
3 hopefully -- if it can't be resolved, this will get put back on
4 the calendar. But I'm not taking any action with respect to
5 the issues of your claim at this point.

6 You're free to stay on the phone, but you also are
7 excused if you want. So it's up to you.

8 MS. BIANCAVILLA: I appreciate that. May I ask you a
9 question?

10 THE COURT: You can ask. I might not be able to
11 answer it. But go ahead.

12 MS. BIANCAVILLA: Okay, that's fair. Sure, yeah. I
13 appreciate a couple of minutes.

14 So that's -- if I get to a place in the negotiations
15 where I'm not comfortable with moving forward, and I decide
16 that I'd like to move forward on my own, in the court, is that
17 possible to do by way of CourtCall?

18 THE COURT: Yes, it is.

19 MS. BIANCAVILLA: Okay, and just like faxing,
20 e-mailing documents?

21 THE COURT: Yes, it is. And there are a reasonable
22 number of -- we call them "pro ses" that represent themselves,
23 they're not lawyers. And I absolutely permit pro se parties to
24 appear by telephone. Where do you live, Ms. Biancavilla?

25 MS. BIANCAVILLA: I'm in the State of Pennsylvania.

RESIDENTIAL CAPITAL, LLC, ET AL.

11

1 THE COURT: Okay.

2 MS. BIANCAVILLA: And I'm really unable to travel.

3 THE COURT: That's fine. No, we -- these hearings, I
4 regularly have people appear by telephone, and I'm certainly --
5 it's satisfactory to have you do that. So you don't have to
6 physically be here. The only time you'd have to be here is if
7 it were actually a trial where witnesses testify. I don't do
8 those by telephone. But if it ever got to that, we'll talk
9 about it, okay?

10 MS. BIANCAVILLA: I appreciate that. All right, thank
11 you so much. That makes me feel better.

12 THE COURT: All right, so --

13 MS. BIANCAVILLA: And you know, it's not feeling boxed
14 into a place where --

15 THE COURT: Okay.

16 MS. BIANCAVILLA: -- I don't feel that justice is
17 served.

18 THE COURT: Okay, so as I say, you're welcome to stay
19 on the phone, but you're also excused if you want to get off.
20 Okay?

21 MS. BIANCAVILLA: Yeah, I thank you. I think I might
22 hang out for a little while, since it's already paid for --

23 THE COURT: All right.

24 MS. BIANCAVILLA: -- for forty-five minutes, and hear
25 how it goes as an icebreaker for future reference.

1 THE COURT: Okay. Thank you, Ms. Biancavilla. All
2 right.

3 MS. BIANCAVILLA: Thank you.

4 THE COURT: All right, Mr. Wishnew, go ahead.

5 MR. WISHNEW: Thank you, Your Honor. Getting back to
6 the agenda, item 2 on page 6, the sixty-first omnibus
7 objection. As noted, there are two objections or two responses
8 to the omnibus objection, one filed by Mr. Larkins, one filed
9 by Mr. Tobias.

10 I will address first the response of Mr. Tobias.

11 THE COURT: Okay.

12 MR. WISHNEW: Your Honor, this is simply -- this is a
13 claim that was timely filed, however it was simply a one-page
14 claim for a million dollars that purportedly relates to a
15 320,000-dollar note. It notes -- the claim says that there's a
16 complaint yet to be filed. Well, October 2013, seventeen
17 months after the petition date, over a year after the claim was
18 actually filed, Mr. Tobias commences litigation in a venue
19 other than this bankruptcy court, naming numerous entities,
20 including GMAC Mortgage, and makes overly broad and general
21 allegations that are not specific to any debtor specific
22 entity.

23 In his response to our objection he says well, the
24 claim shouldn't be expunged because the complaint hasn't been
25 resolved yet. Well, Your Honor, there's a couple of fatal

1 flaws here.

2 He never sought stay relief to commence the action.

3 He never served GMAC Mortgage with the action. GMAC Mortgage

4 has never appeared. There are no substantial -- there are no

5 specific facts to evidence any wrongdoing or liability of a

6 specific debtor entity. And in sum, the claim itself should

7 not be entitled to any sort of validity, because he hasn't even

8 made any allegations of fact to establish a valid claim.

9 So for all of those reasons, Your Honor, we would ask
10 that this claim be expunged and disallowed.

11 I believe Mr. Tobias is on the phone today, so --

12 THE COURT: Yes. Let me ask you a few questions.

13 Since no complaint was attached or filed as of the time the

14 claim was filed, I want to be sure I understand, is your

15 argument -- because as is usual and is required, I gather, a

16 request for additional information was sent to --

17 MR. WISHNEW: Correct, Your Honor.

18 THE COURT: -- Mr. Tobias?

19 MR. WISHNEW: Yes.

20 THE COURT: And his original response was, haven't yet

21 filed a complaint but I will. Okay. And then ultimately, in

22 response to the objection, he attached a copy of his complaint

23 to his response?

24 MR. WISHNEW: Correct, Your Honor.

25 THE COURT: Okay.

1 MR. TOBIAS: Your Honor, this is Mr. Tobias.

2 THE COURT: Mr. Tobias, I'll give you a chance after

3 I --

4 MR. TOBIAS: Oh, okay.

5 THE COURT: -- okay? Don't worry. I'll let you
6 speak.

7 So it would seem to me that there could be an issue
8 about whether he's attempted to amend his -- untimely amendment
9 to a claim and have it relate back. That's not really
10 addressed in your papers.

11 But the issue of -- I mean, you seem -- your papers
12 focus on he filed a complaint in violation of the automatic
13 stay. That may have been. But he never -- you also say he's
14 never served GMAC-M. But a complaint filed or not, attached to
15 a -- submitted to the Trust in support of a claim, I'd have to
16 evaluate whether what's asserted in that complaint was
17 sufficient to state a claim against the debtor. Do you agree
18 or not?

19 MR. WISHNEW: I agree, Your Honor.

20 THE COURT: Okay. And in prior ResCap objections to
21 claims, I think I've written that I basically apply Rule 8
22 unless it's a fraud claim, which is 9(b). So the complaint
23 that he finally gave you -- let's put aside the late claim
24 issue -- the complaint that he finally gave you, I would have
25 to evaluate under the normal pleading standards, whether it

1 stated a claim against any of the debtors. Do you agree?

2 MR. WISHNEW: Yes, Your Honor.

3 THE COURT: Okay. Because it seemed to me, in that
4 sense, whether he filed it or filed it in violation of the
5 automatic stay is kind of a red herring issue in terms of what
6 I have to decide. It wouldn't matter whether he filed a
7 complaint or not. What I would have to decide is, this piece
8 of paper that he gave you that was denominated a complaint that
9 ultimately was filed, although not served --

10 MR. WISHNEW: Um-hum.

11 THE COURT: -- on GMAC, whether that was sufficient to
12 state a claim.

13 MR. WISHNEW: I would agree, Your Honor. And I
14 think -- so our objection really almost is twofold, in that --
15 not only is the point that the claim is ins -- or the claim
16 together with the complaint is insufficiently pled to state a
17 valid basis for liability. But on top of that, you have the
18 issue of the complaint having any validity at all, because
19 it's -- it post-dates the petition date.

20 THE COURT: Okay. Well, whether it post-dated the
21 petition date or not, when I entered the procedures order that
22 required that the trust request additional support for claims,
23 and people provide it, that's after the petition date; that
24 doesn't matter. I mean, it's -- he has to be -- the claim has
25 to be a pre-petition in the sense that what he's complaining

1 about has to have been conduct that occurred before the
2 petition date.

3 MR. WISHNEW: Right.

4 THE COURT: And he does, right?

5 MR. WISHNEW: I'm not certain of that.

6 THE COURT: Okay.

7 MR. WISHNEW: It's not entirely clear for me -- I
8 think this goes back to the insufficient pleadings on the
9 facts -- whether there's actually any action pre-dating May
10 14th, 2012, that GMAC Mortgage is specifically responsible for.

11 THE COURT: Okay.

12 MR. WISHNEW: So that's the issues that -- multitude
13 of issues that we think are deficient here and warrant
14 expungement of the claim.

15 THE COURT: Okay. Let me see whether I have other
16 questions for you. So as -- the case is going forward against
17 some nondebtor defendants in the District Court of New Jersey,
18 correct?

19 MR. WISHNEW: Correct, Your Honor.

20 THE COURT: And from looking at the docket, I see that
21 the action was discontinued or terminated against President
22 Obama and I think the United States of America as well. It
23 looks like because it wasn't served within the time provided by
24 Rule 4(m). But the action is going forward against other
25 nondebtor defendants.

1 Mr. Tobias has filed a motion to amend the complaint.
2 The defendants moved to dismiss the complaint. The district
3 judge has said I won't consider the motions to dismiss until I
4 decide the issue of whether to allow an amended complaint. Is
5 that a fair statement?

6 MR. WISHNEW: I believe so, Your Honor, yes.

7 THE COURT: But whether or not the district court
8 allows an amended complaint, that didn't stop Mr. Tobias from
9 being more specific in what he filed in this court as the basis
10 for his claim. You agree with that too, I take it?

11 MR. WISHNEW: Yes.

12 THE COURT: Okay. All right, let me ask Mr. Tobias
13 some -- Mr. Tobias, go ahead. You want to be heard?

14 MR. TOBIAS: Yes, good morning, Your Honor. You know,
15 basically if you have any questions, I'll be more than happy to
16 provide any additional information. Essentially what I
17 heardaddressing adverse counsel, is basically correctother
18 than -- and I did serve GMAC. They did actually -- in
19 conjunction with Ocwen, which was another one of the co-
20 defendants, they did actually answer the complaint.

21 THE COURT: Well, you didn't serve GMAC. Ocwen
22 answered and purported to appear on behalf of GMAC --

23 MR. TOBIAS: Okay, I may have --

24 THE COURT: -- in 2013, which they shouldn't have
25 done.

1 MR. TOBIAS: Yeah, and actually, GMAC, I believe, is
2 now represented. And we did have discussions during a status
3 conference regarding the automatic stay in terms of now the
4 judge is reviewing my motion to amend the complaint based on
5 the previous objection.

6 THE COURT: Okay. Well, my real -- what I really want
7 to hear from you about, so as I understand it, you have three
8 properties on the Jersey shore. They were damaged by Hurricane
9 Sandy.

10 MR. TOBIAS: Yes.

11 THE COURT: And it's the result of the damage from
12 Hurricane Sandy, that's the genesis of your claims that you're
13 asserting in the complaint in the district court or your proof
14 of claim here. Am I right?

15 MR. TOBIAS: That would be related. But in addition,
16 because they do kind of reflect against properties that were
17 mortgaged, and of course, there are questions as to consumer
18 fraud and these would -- this would be conduct that pre-dates
19 the --

20 THE COURT: Well, you don't allege --

21 MR. TOBIAS: -- date as --

22 THE COURT: -- any specific conduct by --

23 MR. TOBIAS: Well, I understand --

24 THE COURT: -- GMAC -- stop. Mr. Tobias?

25 MR. TOBIAS: Yes.

1 THE COURT: Okay. Let me finish what I'm asking --

2 MR. TOBIAS: I'm sorry.

3 THE COURT: -- and then I'll let you answer. It's one
4 of the -- I let people appear by telephone, but you can't
5 interrupt me when I'm speaking. Okay?

6 MR. TOBIAS: Yes. I'm sorry, sir.

7 THE COURT: All right. So, the problem with the
8 complaint that you attached to your response is there are no
9 specifics whatsoever about any alleged misconduct by GMAC-M.
10 That just doesn't cut it. I mean, you -- so tell me what it is
11 that you believe that GMAC Mortgage did that you think gives
12 rise to a claim against it?

13 MR. TOBIAS: Basically, with regards to my claim for
14 federal funds from Hurricane Sandy, flood insurer, that the
15 price that I paid for the properties was artificially inflated
16 by GMAC such that I'm not able to receive enough proceeds from
17 the flood insurer to adequately recoup my investment.

18 THE COURT: Did you buy the property from GMAC?

19 MR. TOBIAS: I did not. However, they did provide
20 appraisal --

21 THE COURT: So how can -- how can they --

22 MR. TOBIAS: -- services.

23 THE COURT: -- have inflated the price, if you didn't
24 buy it from them?

25 MR. TOBIAS: Well, it is a difficult claim. I do

1 understand that. Basically, it's one of those hapless
2 homeowner claims that the entire market at the time was
3 manipulated. I mean, it's hard to pin down specific facts.
4 But when one looks at the price that I paid and the price that
5 everyone in my situation paid, it seems that there should be
6 some recourse for those market manipulations.

7 THE COURT: Who manipulated the market, Mr. Tobias?

8 MR. TOBIAS: I believe GMAC and Ditech amongst
9 others -- other mortgage companies at the time, that would be
10 unrelated to my particular claim.

11 THE COURT: How did they manipulate the market?

12 MR. TOBIAS: Well, that's one of those things that I'm
13 not sure. It's more one of those public knowledge of providing
14 excess loans that drove, you know, the entire market up.

15 THE COURT: Did you apply for a loan?

16 MR. TOBIAS: I did.

17 THE COURT: And did you decide how much of a loan you
18 were going to apply for?

19 MR. TOBIAS: I did decide that amount based on the
20 price of the property. Of course my --

21 THE COURT: Okay. GMAC didn't set the price of the
22 property, right?

23 MR. TOBIAS: They did not set the price of the
24 property, but because of their effects on the market in terms
25 of fallacious advertising --

1 THE COURT: So your complaint is that it was too easy
2 to get a lot of -- to borrow a lot of money, and therefore that
3 drove the price of the property up?

4 MR. TOBIAS: That would be true. And because I'm in a
5 position that my loans are going to be completely paid off as
6 opposed to the -- the other homeowners who were more deeply
7 defrauded in terms of having had their houses in foreclosure,
8 that while I was not damaged as much as they, I was damaged to
9 such a degree. And I'm making a claim for that differential.

10 THE COURT: Okay. Anything else you want to add?

11 MR. TOBIAS: Well, other than the -- it's similar to
12 amending the complaint in terms of my claims, that the
13 magistrate judge is additionally reviewing --

14 THE COURT: The magistrate judge has got nothing to do
15 with what happens in my court. Only I do. And you had to
16 provide an appropriate basis for your claim. And the issue is
17 whether what you've given me does that or not. And I'll have
18 to decide that. What the magistrate judge does with your case
19 in the District Court of New Jersey is completely up to him.
20 It doesn't affect what I do at all.

21 MR. TOBIAS: Okay.

22 THE COURT: Anything else you want to add?

23 MR. TOBIAS: No, Your Honor.

24 THE COURT: Okay. All right, I'm going to take it
25 under submission, Mr. Wishnew.

1 MR. WISHNEW: Thank you, Your Honor.

2 THE COURT: Thank you very much, Mr. Tobias.

3 MR. TOBIAS: Okay, thank you. Should I remain on the
4 line or --

5 THE COURT: No, you don't have to. You can or not,
6 it's up to you.

7 MR. TOBIAS: Okay, thank you very much, Your Honor.

8 THE COURT: Okay. Thank you.

9 Mr. Wishnew?

10 MR. WISHNEW: Thank you, Your Honor. The next
11 response was received by Mr. Neil Larkins. Your Honor, this is
12 an instance where the --

13 THE COURT: Let me just -- Mr. Larkins, you're on the
14 phone?

15 MR. LARKINS: Yes, I am.

16 THE COURT: Thank you. Go ahead, Mr. Wishnew.

17 MR. WISHNEW: Thank you, Your Honor. This is an
18 instance where the debtors' connection to the loan was all of
19 three months in 2006. The debtors briefly held the loan in
20 connection with securitizing it. And what is notably absent
21 from Mr. Larkins' pleadings is any sort of specific fact or
22 basis for liability against a debtor entity. Notwithstanding
23 the fact that he has quantified his claim, what is lacking is
24 any evidence of how RFC or some other debtor entity is somehow
25 responsible for those damages.

1 All we did here was simply acquire the loan and put it
2 into a securitization trust, which was overseen by Deutsche
3 Bank. If there are issues in terms of chain of title, clouded
4 title, ultra vires, those do not -- those are not tied in any
5 way by Mr. Larkins to a debtor entity.

6 We have done our best -- notwithstanding the fact that
7 we believe all of the questions raised by Mr. Larkins have no
8 relevance to the debtors, we've done our best in the reply to
9 address those questions. In two separate instances in late
10 April, we provided -- we had two separate document productions
11 to Mr. Larkins, consistent with the form of omnibus objection.
12 And those documents are consistent with what is attached to
13 both our pleadings and Mr. Larkins' pleadings.

14 So in sum, Your Honor, the reason for the objection,
15 the reason we believe the claim should be disallowed, is simply
16 that RFC simply securitized this loan. It did not have any
17 connection with the origination of the loan. It would have no
18 power to rescind the loan, as Mr. Larkins seems to want. And
19 if there's any present action that is proceeding against Mr.
20 Larkins, and we don't know if there is or is not, we have no
21 connection to this loan. We haven't had a connection to this
22 loan since 2007.

23 So at this point, if he does have issues, they're not
24 against a debtor entity. They may be against another nondebtor
25 corporate entity. And for these reasons, there should not be a

1 claim.

2 THE COURT: Okay. Mr. Larkins? First, Mr. Larkins,
3 are you a lawyer?

4 MR. LARKINS: No, I'm not.

5 THE COURT: Okay, go ahead.

6 MR. LARKINS: Am I allowed to talk now, or --

7 THE COURT: Yes, absolutely.

8 MR. LARKINS: Oh, thank you. This is the first time
9 I've ever been through anything like this, so I'm not real
10 familiar with the court rules or anything.

11 I just received a packet from -- regarding my claim
12 from the trust. And I noticed that there were some papers
13 missing out of it. This is the stuff I just received two days
14 ago. And I noticed that there was -- on my supplemental PSA,
15 the cover page was there, the front page, but the rest of the
16 supplemental PSA is missing out of my packet here. So I just
17 wanted to put that on record.

18 And then, the reason why I believe that RFC is still
19 liable is because they never transferred it into the trust.
20 And so I saw their objection. And they said that they bought
21 it from National City Bank of Indiana back on 7/24. But
22 National City Bank of Indiana went out of business prior to
23 that. And the other issue is that on their -- on their
24 objection they said that they sold it directly to the Deutsche
25 Bank. And then on their -- on their answer, on their reply to

1 support their claim, they changed that story. Now all of a
2 sudden, they sold it to Residential Credit.

3 So -- and this is like the first time I've seen this
4 where they actually said that they sold it to Residential
5 Credit. And on their objection -- omnibus sixty-first
6 objection, they said they sold it to Deutsche directly. So
7 it's kind of changed -- their objection's kind of changed a
8 little bit here, and this is the first I've heard of this.

9 THE COURT: May I ask you this? I have the note -- a
10 copy of the note in front of me. And the copy of the note that
11 I have in front of me shows three endorsements.

12 MR. LARKINS: Right.

13 THE COURT: One from National City Mortgage Co. to --
14 well, I guess it's actually from National City Mortgage to
15 National City Mortgage Co. And the second endorsement is from
16 National City Mortgage Co. to Residential Funding Company, LLC.
17 And the third endorsement is from Residential Funding LLC to
18 Deutsche Bank Trust Company Americas as Trustee. Are you
19 familiar with that document?

20 MR. LARKINS: Yeah, I have it right in front of me.
21 And so that's the discrepancy between what they're claiming now
22 that they sold it to Funding Credit. They're missing
23 completely on this. And the pooling and service agreement --
24 National Credit -- I mean, Funding Credit is the depositor.
25 And the supplemental -- the PSA says that the depositor is the

1 one that sells it to the trust.

2 And I also noticed that on the note that Residential
3 Funding sold it to Deutsche Bank Americas as Trustee, but for
4 what trust? Because they're a trustee for a lot of trusts.

5 THE COURT: Okay. So let me -- you said that one of
6 the prior assignees went out of business. Which one?

7 MR. LARKINS: National City Bank of Indiana.

8 THE COURT: And when did it go out of business?

9 MR. LARKINS: It went out of business on 7/22 of '06.

10 THE COURT: And was it taken over -- do you know
11 whether it was taken over by the FDIC or what happened?

12 MR. LARKINS: Well, what I -- I got that information
13 from the FDIC.

14 THE COURT: Okay.

15 MR. LARKINS: So I'm not sure what happened with it,
16 just that they were out of business as of that date. That was
17 off the FDIC website.

18 THE COURT: Okay.

19 MR. LARKINS: And my main concern is that on the
20 sixty-first omnibus objection, they're making certain claims as
21 facts, and then on the ResCap Borrower Claims Trust reply in
22 support of ITS (sic), they're saying something different again.
23 So I don't know which is correct.

24 THE COURT: So let me ask -- Mr. --

25 MR. LARKINS: Sure.

1 THE COURT: So it's -- Deutsche Bank Trust Company
2 Americas is trustee for one of the RALI trusts, it appears --

3 MR. LARKINS: Yeah, the 2006 -- right.

4 THE COURT: -- yeah, it appears as of record today to
5 be the owner of the note and mortgage. Whether it is or not --
6 in other words, if you believe -- and RFC -- no debtor entity
7 claims any interest in the mortgage, only Deutsche Bank as
8 trustee for this RALI trust.

9 If you have a quiet title action or a declaratory
10 relief claim against -- so you claim to have an ownership
11 interest in it, and Deutsche Bank as trustee does. And so if
12 there's a dispute between you, it's with Deutsche Bank Trust
13 Company of Americas. And I don't see -- what I'm wondering is,
14 what's the basis for suing -- for filing a claim against
15 Residential Funding, which doesn't claim an interest in it?

16 So if you have -- I guess basically to simplify it, if
17 you've got a quiet title claim or you have -- I understand no
18 one's trying to foreclose on the property right now. Am I
19 right on that?

20 MR. LARKINS: Not right now, no.

21 THE COURT: Okay. So but if you think that title of
22 the property is clouded by this assertion that Deutsche Bank
23 Trust Company Americas as Trustee is the holder of the note and
24 mortgage, sue them. But what's the basis for your suing -- I
25 mean, I didn't -- I looked quickly, and I understand you're not

1 a lawyer. Because the property's in Oregon, right?

2 MR. LARKINS: Correct.

3 THE COURT: Okay. Do you know of any law that would
4 require that every party in the chain of title going back to
5 when you acquired it, be made a party to a quiet title action?

6 MR. LARKINS: Yeah, the Supreme Court here in Oregon
7 says that they're not required to record in public records.
8 But if they want to foreclose, they would have to record.

9 THE COURT: Sure. So if Deutsche Bank wants to
10 foreclose, they have to record. And I understand this whole
11 thing about MERS, because they're involved in this chain
12 arguably. But that's not one of the debtors. So if -- I
13 understand no one's trying to foreclose now. If they did,
14 they'd have to have recorded it.

15 But let me assume that you believe that there's a
16 cloud on your title, so you'd have to assert your claim against
17 Deutsche Bank Trust Company Americas as Trustee. But that
18 doesn't implicate RFC. So that's what -- I think the basic
19 point that Mr. Wishnew has raised is, any issues about chain of
20 title, they're not tied to the debtor entity.

21 If you sue Deutsche Bank Trust Company Americas in
22 state or federal court in Oregon, and -- or elsewhere, if you
23 can -- and you're able to sort of invalidate their ownership or
24 interest, well, good luck to you.

25 MR. LARKINS: Yeah. If I could just get one point --

1 I just want to get one point across, and maybe --

2 THE COURT: Sure.

3 MR. LARKINS: -- get some feedback from you. In their
4 assumption agreement, they put as one of their exhibits, on
5 section 2-01, it's actually -- it's on page 152 of 277 --
6 Article 2, section (d), subsection (iii) says on that whole
7 section there, that if Residential Funding did not sell the
8 loan into the trust or fulfill their part as far as their PS --
9 as their agreement goes, that it has to be recorded within
10 thirty days. And if they don't do that, they're in default to
11 Deutsche. And --

12 THE COURT: Well, that's between Deutsche Bank and
13 RFC. I mean, I understand your point there.

14 MR. LARKINS: Yeah.

15 THE COURT: I don't know whether it's a -- whether
16 that argument could be supported or not. But that would be
17 between Deutsche Bank Trust Company Americas and RFC.

18 Your dispute, if you will, appears to be that you
19 don't believe that -- you believe that there's this cloud on
20 title because Deutsche Bank Trust Company Americas purports to
21 have an interest in your property, and you say it doesn't.
22 And --

23 MR. LARKINS: Right.

24 THE COURT: -- if you've got a dispute with Deutsche
25 Bank Trust Company Americas, resolve it with them. I don't get

1 to -- I mean, as a bankruptcy judge, with the bankruptcy of
2 Residential Capital and its affiliates, including Residential
3 Funding, I don't -- that doesn't give me the power to deal with
4 your disputes with Deutsche Bank.

5 MR. LARKINS: Right.

6 THE COURT: The issue is, do you have a valid claim
7 against RFC. That's what I'm trying to focus on. I wanted to
8 give you a chance to explain.

9 Let me ask Mr. Wishnew a couple of questions. I'll
10 let you speak again in a minute, Mr. Larkins, okay?

11 MR. LARKINS: All right, thank you.

12 THE COURT: Mr. Wishnew, looking at the promissory
13 note, the lender is identified as National City Bank of
14 Indiana. Payments are to be made to National City Mortgage Co.
15 How is it that National City Mortgage -- I don't see any
16 endorsement from National City Bank of Indiana, to anybody
17 else. Is that -- are the endorsements shown on the note valid?
18 I mean it doesn't --

19 MR. WISHNEW: I believe, Your Honor, the -- so the
20 endorsement at the end of the note says, "Pay to the order of
21 National City Mortgage Co."

22 THE COURT: So the question is, who endorsed it to
23 National City Mortgage Co.?

24 MR. WISHNEW: My understanding would be National City
25 Bank of Indiana.

1 THE COURT: Where does it show that?

2 MR. WISHNEW: Well, there's an assignment -- not
3 necessarily the note, but there's the assignment of the deed of
4 trust from National City Bank of Indiana to National City
5 Mortgage Co.

6 THE COURT: Well, isn't the law quite clear that an
7 assignment of the mortgage, unless it's expressly provided that
8 the note is transferred with it, doesn't transfer the note?

9 MR. WISHNEW: Correct, Your Honor.

10 THE COURT: Is there an assignment of the note from
11 National City Bank of Indiana to National City Mortgage?

12 MR. WISHNEW: I would have to go back and check on
13 that, Your Honor.

14 THE COURT: When National -- so do you have the note
15 in front of you?

16 MR. WISHNEW: I do, Your Honor.

17 THE COURT: The endorsement to Residential Funding,
18 LLC --

19 MR. WISHNEW: Yes.

20 THE COURT: -- it says, "Without recourse, National
21 City Mortgage Co.," and then the rest of it is illegible. What
22 does it say?

23 MR. WISHNEW: I believe it says, "a subsidiary of
24 National City Bank of Indiana." Which is consistent with the
25 prior endorsement, which says, "Pay to the order of National

1 City Mortgage Co., a subsidiary of National City Bank of
2 Indiana."

3 THE COURT: Signed by -- endorsed by whom? I can't
4 read it.

5 MR. WISHNEW: Endorsed by National City Bank of
6 Indiana.

7 THE COURT: Is it? I can't read it.

8 MR. WISHNEW: It is, Your Honor. They cross out
9 "National City Mortgage, a division of," and then beneath that
10 is a slightly, I'll admit, barely legible indication of
11 National City Bank of Indiana.

12 THE COURT: Do you have a better copy? I can't read
13 it. That's the problem.

14 MR. WISHNEW: I will work to get you one, Your Honor.

15 THE COURT: Okay. I'm not sure, at the end of the
16 day, whether that's going to be determinative here, because
17 this still comes down to whether Deutsche Bank has an interest.

18 Obviously, Residential Funding could only endorse and
19 assign that which it owned. If the endorsements that purported
20 to give it to Residential Funding are invalid, well --

21 MR. WISHNEW: Then it's with the predecessor, which is
22 a nondebtor entity.

23 THE COURT: So my problem is, I can't read that first
24 endorsement. It may well be -- and I'm not prepared -- it
25 looks like it could be National City -- I see National -- I

1 don't know what follows -- it may be that Indiana's at the end.

2 Okay? But I can't tell.

3 MR. WISHNEW: Understood.

4 THE COURT: None of the endorsements are dated. Mr.
5 Larkins --

6 MR. LARKINS: Yes?

7 THE COURT: Well, I'm mentioning you because Mr.
8 Larkins said that on July 22nd, 2006, National City Bank of
9 Indiana went out of business. And do you have any information
10 about -- you're at least -- Mr. Wishnew, you're representing
11 for now that National City Bank of Indiana endorsed the note
12 first to National City Mortgage, and National City Mortgage
13 wound up endorsing it to Res Funding --

14 MR. WISHNEW: That's correct.

15 THE COURT: -- RFC.

16 MR. WISHNEW: Yes, Your Honor.

17 THE COURT: Do you have any information about when?
18 It wouldn't be the first time -- I've got to tell you, it
19 wouldn't be the first time that a defunct institution purported
20 to transfer its portfolio. I don't know. I've looked -- not
21 in this, but in another matter, I had to look at the documents
22 by which the FDIC took over an institution and what happened
23 with its portfolio and all that.

24 I have no reason, certainly from looking at the face
25 of the note, there's no basis for me to say that National City

1 Bank of Indiana didn't endorse the note while it still existed,
2 et cetera. And Mr. Larkins has not presented me with any
3 evidence to the contrary.

4 MR. LARKINS: Your Honor?

5 THE COURT: Go ahead, Mr. Larkins.

6 MR. LARKINS: Yes. On the three assignments that I
7 have on record here --

8 THE COURT: Yes.

9 MR. LARKINS: -- those assignments they're back-dated.

10 THE COURT: They're not dated, Mr. Larkins.

11 MR. LARKINS: No, on the assign -- not the note. I'm
12 talking about the recorded assignments here in the county.

13 THE COURT: Yes.

14 MR. LARKINS: Where National City Bank of Indiana sold
15 it to National City Mortgage, but those are recorded two months
16 after the closing date of the trust of the QS2006-14 trust.
17 And they were recorded two months after. So why would -- this
18 is my question is, why would there need to be these entities
19 like National City Mortgage and National City Bank of Indiana,
20 doing this after the trust closed. It doesn't make any sense.

21 THE COURT: Well, the recording date and -- look, I
22 don't know of a requirement that the recording take place
23 contemporaneously with the assignment. Let me finish, and I'll
24 give you a chance.

25 MR. LARKINS: Sure, sure.

1 THE COURT: Where that can become important is in the
2 rights of intervening claimants, but not as to the validity of
3 a recording. So that, I mean, the issue from -- and I'm not
4 asking you to agree with me, but ordinarily the issue is when
5 was the -- if the assignment was done while the institution
6 existed, it's not invalidated because it wasn't recorded until
7 sometime thereafter. So you haven't presented me in what I've
8 looked at, with any evidence that the assignment wasn't validly
9 done. I'm not faulting you for doing this. You're putting
10 forward what you've found, which is when an assignment got
11 recorded.

12 But go ahead if you want to address it. Go ahead.

13 MR. LARKINS: So on the third assignment, the mortgage
14 MERS, along with National City Bank of Indiana, handwritten in
15 on this recorded assignment, was dated 8/24/2011. And it was
16 recorded a month later. But it was notarized by a notary on
17 8/24/2011, that MERS, along with National City Bank of Indiana
18 assigned it to Deutsche directly. So that's what bothers me.

19 THE COURT: Okay. That's of the mortgage, right?
20 That's not the note, that's the mortgage?

21 MR. LARKINS: That's the mortgage, correct.

22 THE COURT: Okay. So the -- Mr. Wishnew, do you have
23 the document that Mr. Larkins is referring to?

24 MR. WISHNEW: The assignment of deed of trust, Your
25 Honor?

1 THE COURT: Yeah.

2 MR. WISHNEW: Yes, I do.

3 THE COURT: Could you just -- I'm sure I have it up
4 here, but it would be simpler if you just brought a copy up to
5 me for me to look at.

6 MR. WISHNEW: Sure, Your Honor.

7 THE COURT: Or tell me -- I have the binders in front
8 of me. If you'll just tell me exactly where --

9 MR. WISHNEW: Yeah, I'm locating it, Your Honor.

10 MR. LARKINS: It's page 31.

11 THE COURT: Hang on. Because I've got these binders
12 with a lot more exhibits than what you provided, okay, Mr.
13 Larkins.

14 MR. LARKINS: Okay.

15 THE COURT: So just bear with me, okay?

16 MR. LARKINS: Okay.

17 MR. WISHNEW: It's Exhibit C to the Borrower Trust
18 reply. And within Exhibit C it is -- it begins -- the
19 assignments begin on page 31.

20 THE COURT: Okay, let me make sure I have it.

21 MR. WISHNEW: Your Honor, I can approach --

22 THE COURT: I have it. I have it in front of me. I
23 want to trace through.

24 (Pause)

25 THE COURT: Okay, Mr. Larkins, I have those documents

1 in front of me. Do you want to tell me about it?

2 MR. LARKINS: Yeah, okay, on the first and second
3 assignments --

4 THE COURT: Yes.

5 MR. LARKINS: -- you notice that the -- okay, so go to
6 the first assignment. The notary has it dated 6/20/06.

7 THE COURT: Yeah, and then it changes it to August --

8 MR. LARKINS: And that's -- then the person that
9 signed it, the National City Bank of Indiana, it was dated
10 5/11/06. So how could that be different there? I don't
11 understand that --

12 THE COURT: Okay.

13 MR. LARKINS: -- and then recorded in December. And
14 then on the second assignment, same thing, the dates of the
15 notary and the date that the person executed on are different
16 dates, also recorded one minute later on December 6th.

17 THE COURT: Okay.

18 MR. LARKINS: Okay? And also, on the second
19 assignment, National City Mortgage assigned it to MERS, but not
20 as nominee.

21 And then on the -- on the third assignment, the
22 notary, just everything's crossed out and then 8/24/2011 --
23 effective date 8/24/2011 and recorded about a month later. But
24 on the third assignment, it's got Mortgage Electronic
25 Registration System as nominee. So that changed there. And

1 then, "National City Bank of Indiana" handwritten in also,
2 which was different -- both those are different than the
3 previous assignment.

4 And the only reason I noticed that is because I used
5 to be a title searcher and that is not appropriate what they
6 did here. To me -- it seems like to me things were doctored up
7 here.

8 And also, I want to -- on the second assignment --
9 THE COURT: Yes.

10 MR. LARKINS: -- right below, it says "Space above
11 this line for recorder's use," right below that it has a pool
12 number, 0001155736. That's a different pool number than the
13 one that Deutsche Bank supposedly has the trust, the QF214
14 trust. That's a 40419.

15 THE COURT: I guess what --

16 MR. LARKINS: That --

17 THE COURT: -- let me ask you this.

18 MR. LARKINS: Yes.

19 THE COURT: So --

20 MR. LARKINS: Sure.

21 THE COURT: -- I see the issues you're raising and
22 they may be -- I'm not saying they are -- but they may raise
23 valid issues as to whether Deutsche Bank Trust Companies of
24 America (sic) as trustee for specific RALI trusts --

25 MR. LARKINS: Um-hum.

1 THE COURT: -- actually has an interest in the
2 mortgage. So to -- well, an issue about the note and the
3 mortgage. And so if what you were doing was asserting a quiet
4 title or a declaratory judgment claim against Deutsche Bank,
5 you'd come forward with this as evidence and say they don't
6 have -- they never got the interest they say they had. Without
7 deciding the issue, I would just note -- and I haven't looked
8 specifically at Oregon law, I want to make it clear -- but, for
9 example, the law in New York and in many other states is
10 that -- we refer to it as "the mortgage follows the note." The
11 issue is who owns the note; that's the debt.

12 MR. LARKINS: Yeah, and I can't see where -- who owns
13 it at this point except --

14 THE COURT: Well, you look -- to determine who owns
15 it, that's when you look to the endorsements on the note.
16 Okay. And the reason I say it with some certainty in my voice
17 about New York law is I've written three opinions on it, and
18 New York law is quite clear that the mortgage follows the note.

19 This issue comes up with MERS pretty often. You may
20 be aware of that if you were a title searcher before. So --
21 but I come back to the question, I mean, you haven't -- you
22 filed a claim in the bankruptcy, and the issue for me is do you
23 have a claim against RFC. It's not whether you have a quiet
24 title action or a declaratory judgment action that you can
25 assert against Deutsche Bank Trust Company Americas as trustee

1 for a specific trust. Argue, well, there's no change of title
2 that shows that the trust ever -- that this trust ever acquired
3 an interest in your mortgage.

4 The problem I'm having, Mr. Larkins, is to see why you
5 have a claim against RFC. I'm following -- I see the documents
6 you're referring to.

7 Let me -- Mr. Wishnew, can you address -- Mr. Larkins
8 has raised real issues about the assignments -- the three
9 assignments of the deed of trust.

10 MR. WISHNEW: Um-hum.

11 THE COURT: And I don't see anything on the face of
12 these assignments that purport to assign the note. But do you
13 have -- can you provide an explanation for when the assignments
14 were done? Are these dates crossed out? New dates five years
15 later put in?

16 MR. WISHNEW: I specifically cannot, Your Honor. The
17 only thing I know is that the assignment -- so if we're looking
18 at specifically the assignment from National City Bank of
19 Indiana -- I'm sorry -- National City Mortgage Co. to MERS,
20 right above the signature block for National City Mortgage Co.
21 it says "Assignment executed to be effective as of 7/24/2006."
22 That is, at least, my understanding of when RFC acquired its
23 interest.

24 I mean beyond what's on these -- beyond the dates
25 that's on these documents, I don't have additional information

1 to supplement that.

2 THE COURT: Okay. Mr. Larkins, anything you want to
3 add?

4 MR. LARKINS: Yes. The only thing that I'm trying to
5 get clear here is that I know there's different entities here
6 that had something to do with this loan and RFC is part of
7 that. So it's, like, the way I feel about this is somebody is
8 liable for this that was a clouded title and RFC was a
9 participant in this. And so I can't see where RFC would be off
10 the hook. They may be -- they still may own this loan --

11 THE COURT: No, they --

12 MR. LARKINS: -- as the document --

13 THE COURT: -- they clearly don't own the loan. They
14 clearly --

15 MR. LARKINS: They don't?

16 THE COURT: -- affirmatively state they don't own the
17 loan. They -- there's an endorsement from RFC to Deutsche
18 Bank. What Deutsche Bank got, I'm not going to -- is not for
19 me to decide. Okay.

20 MR. LARKINS: Yeah. Yes.

21 THE COURT: And so --

22 MR. LARKINS: I feel that the -- you know, the -- I
23 mean as far as the pooling and service agreement and the
24 assumption and assignment that they were supposed to have sold
25 it to Residential Accredited (sic) and they -- and apparently

1 they didn't do that. They bypassed them completely and sold it
2 to -- to Deutsche. But then on their answer, on the reply,
3 they're saying something different from their complaint.

4 THE COURT: Okay.

5 MR. LARKINS: Because their complaint clearly says
6 that they sold it directly to Deutsche, and then on the reply
7 to my answer to their objection, they're stating something
8 totally different again.

9 THE COURT: Who's servicing your loan? Who do you
10 make your payments to?

11 MR. LARKINS: Pardon me?

12 THE COURT: Who's the loan servicer?

13 MR. LARKINS: PNC Mortgage.

14 THE COURT: And I take it, you're current on your
15 mortgage payments?

16 MR. LARKINS: No, because I've tried to get PNC
17 Mortgage to tell me who owns the loan and they could not tell
18 me.

19 THE COURT: So you stopped paying?

20 MR. LARKINS: I stopped -- and it's been three years
21 and they have not done anything. So I -- that's why -- I mean
22 I put this -- I figured the bankruptcy thing was a -- to put a
23 claim in was a long shot anyway but I'm trying to do --

24 THE COURT: That I'll agree with. That I'll agree
25 with. I'm sorry; go ahead.

1 MR. LARKINS: Yes. It's a long shot but I was trying
2 to discover -- get discovery through the process.

3 THE COURT: Well, you did.

4 MR. LARKINS: And I got a lot more -- and I have more
5 information now than I did before.

6 THE COURT: You do.

7 MR. LARKINS: So --

8 THE COURT: But the question is did what you got --
9 the discovery that you got establish a claim against
10 Residential Funding? It may give you ammunition --

11 MR. LARKINS: Well --

12 THE COURT: -- if PNC commences a foreclosure action,
13 you may have gotten ammunition to defend it. That's not for me
14 to say.

15 MR. LARKINS: Well, yes, I believe, I did but I'd need
16 a true copy -- a certified true copy of the note because I
17 can't tell who -- who signed for National City Bank of Indiana
18 who sold it in the first place. I'm still at a loss to that
19 and I -- you know, I know that RFC did not follow the terms of
20 the PSA because they sold it directly to Deutsche which they're
21 not supposed to do. So I don't -- see, I'm just a layman. I
22 don't understand all that. But I do -- I can read and it's,
23 like -- and I probably don't have a right to even challenge the
24 trust.

25 THE COURT: I don't know whether you do or not.

1 That's not for me to say. Okay.

2 MR. LARKINS: Yeah. And that -- you know, the problem
3 is, I know that they didn't follow their own rules on this and
4 it's kind of -- upsets me because now I have title. If I
5 wanted to pay this loan off which I could, who do I -- who
6 would I be paying to because now the records show a different
7 pool number than the pool that supposedly it's in.

8 THE COURT: Well, I guess you want to make sure --

9 MR. LARKINS: So at some --

10 THE COURT: -- I guess you want to make sure you get a
11 lien release from whoever --

12 MR. LARKINS: Exactly.

13 THE COURT: -- purports to have title.

14 MR. LARKINS: Yeah. But whoever -- I mean as far as
15 the copies, I mean the records that are in the public records,
16 I don't know who it is and neither can -- PNC can't tell me
17 either. So I just figured that RFC had something to do with
18 the chain of title.

19 THE COURT: So --

20 MR. LARKINS: All of these entities did and none of
21 them are innocent.

22 I can't say that, you know, Bank of Indiana, National
23 Mortgage Co. or RFC or whatever, I don't know who's responsible
24 for this mess up in the chain of title, but I believe that RFC
25 is a contributor to this mess-up --

1 THE COURT: Okay.

2 MR. LARKINS: -- because --

3 THE COURT: All right. Mr. Wishnew --

4 MR. LARKINS: -- it's this --

5 THE COURT: Mr. Wishnew, I want to see a clearer copy
6 of the note with the endorsements.

7 MR. WISHNEW: Will do, Your Honor.

8 THE COURT: I don't know whether you're going to find
9 a better one but --

10 MR. WISHNEW: We'll do our best.

11 THE COURT: Somebody must have the original note.

12 MR. WISHNEW: We will go through our servicing records
13 and see what we can pull.

14 THE COURT: Okay. All right. Mr. Larkins, I'm going
15 to take the matter under submission and in due course issue an
16 opinion. Okay?

17 MR. LARKINS: I appreciate it. And excuse me for --
18 if I didn't act right or say anything right.

19 THE COURT: You did. No, you acted entirely
20 appropriate. Okay.

21 MR. LARKINS: Well, thank you.

22 THE COURT: Okay.

23 MR. LARKINS: I just -- it's just really concerning to
24 me that these entities all acted together and just messed up my
25 paperwork. I mean, you know, no -- I mean there's no innocent

1 party here. I don't care how we cut it but --

2 THE COURT: Mr. Larkins, I'm not giving any legal
3 advice. I just tell you when you stop paying your mortgage for
4 five years, somebody's going to catch up with you at some
5 point. You may have a defense but --

6 MR. LARKINS: Exactly.

7 THE COURT: -- you -- but somebody else will decide
8 that, not me.

9 MR. LARKINS: Correct. I agree.

10 THE COURT: Okay. All right. Thank you very much,
11 Mr. Larkins.

12 MR. LARKINS: Thank you.

13 THE COURT: All right. Mr. Wishnew, anything else for
14 today?

15 MR. WISHNEW: Yes. Two things, Your Honor.

16 One, can I -- can the Borrower Claims Trust submit a
17 form of order on the sixty-first omnibus objection except as to
18 the two matters?

19 THE COURT: Yes, you can.

20 MR. WISHNEW: Okay.

21 THE COURT: The sixty-first omnibus is sustained as to
22 their remaining claims.

23 MR. WISHNEW: Excellent. Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. WISHNEW: Last matter on today's agenda is a --

1 under III, adversary proceedings, a status conference for the
2 Heyward --

3 THE COURT: Yes.

4 MR. WISHNEW: -- v. GMAC Mortgage adversary
5 proceeding.

6 Your Honor, this was adversary -- post-petition
7 adversary proceeding. Consistent with the supplemental
8 procedures that this Court has previously approved, there was
9 an effort by GMAC Mortgage to confer with Mr. Heyward.

10 On three separate occasions, we sent letters to him
11 trying to have an initial conference. Those letters were sent
12 by overnight mail on March 25th, April 1st and April 15th.
13 We've never received a response to him from that. We also
14 submitted a progress report on April 28th highlighting what has
15 transpired since the commencement of this action.

16 At this point, and over the past four weeks,
17 nothing -- there really is nothing more, no further
18 developments.

19 Consistent with -- and while admittedly, we did not
20 send a copy to Mr. Heyward of the notice of a status conference
21 today, what we would like to do, given the absence of any
22 communication from him, is to confirm with the Court whether
23 they'd be comfortable for us to submit a motion to dismiss at
24 this point to try to bring this matter to a conclusion.

25 THE COURT: Absolutely. Go ahead and file a motion to

1 dismiss.

2 MR. WISHNEW: Okay. We will do that, Your Honor.

3 THE COURT: And properly serve it, and we'll deal with
4 it accordingly.

5 MR. WISHNEW: Thank you.

6 THE COURT: Okay.

7 MR. WISHNEW: So that brings us to the end of today's
8 calendar and we thank the Court for its time.

9 THE COURT: Thank you very much.

10 (Whereupon these proceedings were concluded at 11:06 AM)

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I N D E X

RULINGS

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Sixty-first omnibus objection sustained as to	46	21
All claims but Larkins and Tobias		
Motion to dismiss may be filed in Heyward	47	25
adversary proceeding		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: May 30, 2014